IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 421 of 2005

Decided on: March 22, 2006

Prem Singh **…..Appellant.**

VERSUS

Nokh Singh **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant : Mr. G.R. Palsara, Advocate.

For the Respondent : Mr. B.K. Malhotra, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent, Nokh Singh, filed a suit for declaration and injunction, alleging that certain property, being shown in the revenue papers as joint of himself and his brother Prem Singh, appellant herein, was in fact his exclusive property and that the entries in the revenue papers, showing the appellant as co-owner with him, were wrong. The appellant, who was impleaded as defendant, took the plea that the property, in question, had though been granted by way of *nau-tor* in the name of the respondent, actually, it was a joint grant because he, being the brother of the respondent had been having joint family with him, but owing to his being in government service,

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

had been away from the village and also on account of his status as government servant *nau-tor* could not have been granted in his favour. He further pleaded that mutation with respect to the transfer of half share in the suit property in his favour had been got attested by the respondent himself and that report for attestation of mutation was also made by him to the *Patwari* in which he stated that he had given half of the suit property to the appellant, being his brother, by way of *Izadinama* (release deed).

3. The trial Court and the first Appellate Court accepted the plea of the respondent that he is the exclusive owner and the entries in the revenue papers are wrong and contrary to the legal and factual position. The reasoning given by the two Courts below is that the value of the property, being more than Rs.100/-, transfer in favour of the appellant could have been made only by means of a registered deed.

4. The appellant's contention is that this was a case of *Izadinama* (release) and, hence, no registration was required, as per Para-3 of Chapter 8 of Punjab Settlement Manual, which, according to him, has been adopted by the State of Himachal Pradesh. Looking to the fact that *nau-tor* grant was made exclusively in the name of the respondent, there was no question of his releasing any share out of it in favour of the appellant, his brother. Therefore, even though, the *Roznamcha* entry and the mutation order record that half share in the suit property was given to the appellant by *Izadinama* or release, as a

matter of fact, it was a case of transfer of the immovable property by way of some different mode, which looks like gift.

5. For the foregoing reasons, I do not think any substantial question of law is involved. Hence, the appeal is dismissed.

CMP No.723/2005

Dismissed. Interim order dated 16.8.2005, passed on the application, is vacated.

(Surjit Singh)
Judge.

March 22, 2006(sd)